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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 1031 EQUITY EXCHANGE, LLC, et
7 al.,

8 Plaintiffs,

9 v.

10 SUPERIOR HOMES, LLC, et al.,

11 Defendants.

CASE NO. C17-5213 BHS

ORDER VACATING PREVIOUS
ORDER AND DISMISSING
COMPLAINT FOR LACK OF
JURISDICTION

12 This matter comes before the Court on Defendants Superior Homes, LLC
13 (“Superior”) and Estela Mata’s (“Defendants”) motion to dismiss (Dkt. 12) and the
14 Court’s order to show cause (Dkt. 19). The Court has considered the pleadings filed in
15 support of and in opposition to the motion, the parties’ responses to the order to show
16 cause, and the remainder of the file and hereby dismisses the complaint for lack of
17 jurisdiction.

18 **I. PROCEDURAL HISTORY**

19 On March 22, 2017, Plaintiffs 1031 Equity Exchange, LLC (“1031EE”) and Kauai
20 Ocean View Professional Building, LLC (“Kauai Ocean”) (collectively “Plaintiffs”) filed
21 a complaint against Defendants asserting diversity jurisdiction and numerous causes of
22 action based on violations of state law. Dkt. 1.

1 On May 1, 2017, Defendants filed a motion to dismiss arguing that the Court
2 should (1) abstain because of a prior action in Hawaii, (2) dismiss because neither
3 plaintiff is a real party in interest, or (3) dismiss because joinder of the real party in
4 interest would defeat jurisdiction. Dkt. 12. On May 22, 2017, Plaintiffs responded. Dkt.
5 15. On May 23, 2017, Defendants replied and argued for the first time that there is not
6 complete diversity. Dkt. 18.

7 On June 13, 2017, the Court issued an order to show cause regarding an apparent
8 lack of diversity between the parties. Dkt. 19. On June 16, 2016, Defendants responded
9 and agreed with the Court. Dkt. 20. On the morning of June 19, 2019, the Court issued
10 an order dismissing the complaint for lack of jurisdiction. Dkt. 21. Later that day,
11 Plaintiffs responded and pointed out that the Court had set June 19, 2017 as the deadline
12 for responding to the order to show cause. Dkt. 22.

13 II. DISCUSSION

14 A. Previous Order

15 “The court may correct a clerical mistake or a mistake arising from oversight or
16 omission whenever one is found in a judgment, order, or other part of the record. The
17 court may do so on motion or on its own, with or without notice.” Fed. R. Civ. P. 60(a).

18 In this case, the Court issued its previous order before Plaintiffs had a fair
19 opportunity to respond. The Court generally sets Fridays as the deadline for show cause
20 responses, but set the instant deadline for a Monday. Therefore, the Court *sua sponte*
21 vacates the previous order due to this oversight.
22

1 **B. Jurisdiction**

2 “If the court determines at any time that it lacks subject-matter jurisdiction, the
3 court *must* dismiss the action.” Fed. R. Civ. P. 12(h)(3) (emphasis added). *See also Snell*
4 *v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (“Federal Rule of Civil Procedure
5 12(h)(3) provides that a court may raise the question of subject matter jurisdiction, *sua*
6 *sponte*, at any time during the pendency of the action . . .”). Although Defendants
7 improperly raised the issue of diversity jurisdiction for the first time in the reply, the
8 Court must confirm it has jurisdiction before reaching the merits of the dispute. *See*
9 *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380
10 (9th Cir. 1988). As the parties invoking federal jurisdiction, Plaintiffs bear the burden of
11 establishing its existence. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

12 District courts have diversity jurisdiction when the parties are citizens of different
13 states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28
14 U.S.C. § 1332(a)(1). “Diversity jurisdiction requires complete diversity between the
15 parties—each defendant must be a citizen of a different state from each plaintiff.” *In re*
16 *Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1234 (9th Cir. 2008). “In cases where
17 entities rather than individuals are litigants, diversity jurisdiction depends on the form of
18 the entity.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
19 2006). “[A]n LLC is a citizen of every state of which its owners/members are citizens.”
20 *Id.* Thus, if an individual defendant is an owner or member of a plaintiff LLC, “then
21 diversity requirement of section 1332 cannot be satisfied.” *Skaaning v. Sorensen*, CV 09-
22 00364 DAE-KSC, 2009 WL 3763056, at *3 (D. Haw. Nov. 10, 2009)

1 In this case, Plaintiffs have failed to show complete diversity between the parties.
2 Defendants assert that a member of 1031EE, Frank Sarabia, is a citizen of California,
3 which would result in 1031EE being a citizen of California. *Johnson*, 437 F.3d at 899.
4 Plaintiffs fail to address this assertion in their response. They do, however, submit
5 evidence showing that Mr. Sarabia signed documents as the “Managing Member” of
6 1031EE, Dkt. 22 at 31, and refers to 1031EE as his “company,” *id.* at 98. In light of
7 these documents and the uncontested assertion from Defendants, the Court concludes that
8 the record reflects that 1031EE is a citizen of California because Mr. Sarabia is an owner
9 and/or a member of 1031EE. Thus, a plaintiff and a defendant are both citizens of the
10 state of California, and the parties lack complete diversity of citizenship.

11 Furthermore, Plaintiffs submit documents showing another issue with diversity
12 between the parties. Mr. Sarabia declares that he and Ms. Mata were the initial members
13 of Kauai Ocean. *Id.* at 4–5. However, as of September 10, 2016, the managing members
14 are 1031EE and Superior. *Id.*; *see also id.* at 29 (list of members’ names attached to
15 Kauai Ocean’s current Operating Agreement), 30 (attachment recognizing Superior’s
16 admission as a new member of Kauai Ocean). If the Court is interpreting the operating
17 agreement correctly, then Kauai Ocean, a named plaintiff, is suing one of its members
18 Superior, a named defendant. Such a scenario destroys diversity and the Court lacks
19 jurisdiction.
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Dated this 20th day of June, 2017.

BENJAMIN H. SETTLE
United States District Judge